

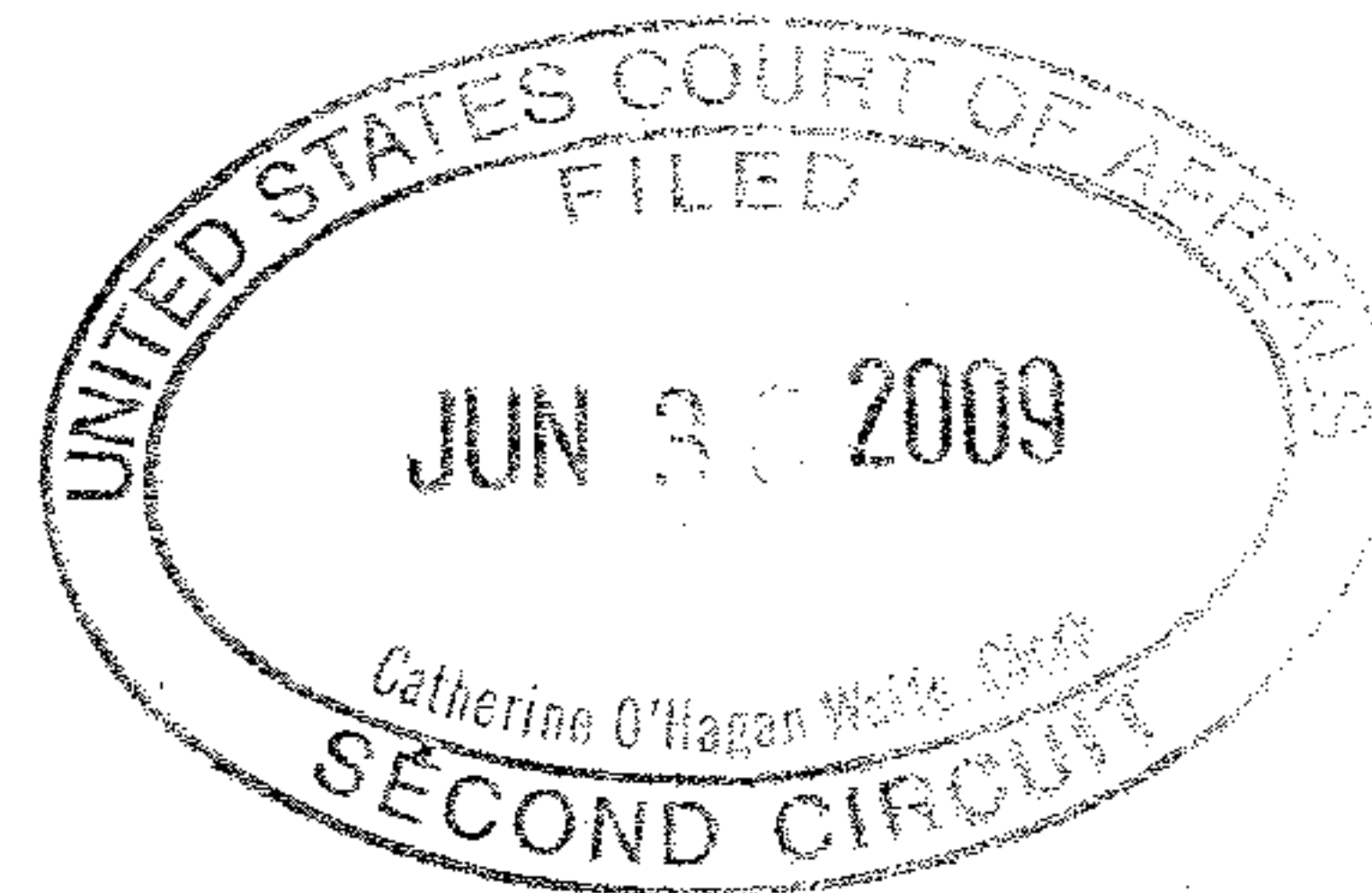
**MANDATE****UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT****SUMMARY ORDER**

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 30<sup>th</sup> day of June, two thousand nine.

PRESENT:

HON. BARRINGTON D. PARKER,  
HON. RICHARD C. WESLEY,  
*Circuit Judges,*  
HON. MIRIAM GOLDMAN CEDARBAUM,\*  
*District Judge.*



THE ANDERSON GROUP, LLC, GAIL ANDERSON,

*Plaintiffs-Appellees,*

v.

**SUMMARY ORDER**

**07-5311-cv**

MICHAEL LENZ, THOMAS CURLEY, MATTHEW MCCABE, THOMAS MCTYGUE,  
STEPHEN TOWNE, LEWIS BENTON, ROBERT BRISTOL, ROBERT ISRAEL, WILLIAM  
MCTYGUE, NANCY OHLIN, LOU SCHNEIDER,

*Defendants-Appellants,*

CITY OF SARATOGA SPRINGS, SARATOGA SPRINGS CITY COUNCIL,

*Defendants.*

\*The Honorable Miriam Goldman Cedarbaum, Senior Judge of the United States District Court for the Southern District of New York, sitting by designation.

ISSUED AS MANDATE: AUG 26 2009



1 FOR APPELLANTS: Gregg T. Johnson, Lemire Johnson, LLC, Malta, N.Y.

2  
3 FOR APPELLEES: Reed N. Colfax, Relman & Dane, PLLC, Washington,  
4 D.C. (Peter A. Lynch, Lynch & Lynch, Albany, N.Y., *on*  
5 *the brief*).  
6

7 UPON DUE CONSIDERATION of this appeal from an order of the United States  
8 District Court for the Northern District of New York, it is hereby ORDERED, ADJUDGED,  
9 AND DECREED that the appeal is DISMISSED in part and the order of the District Court is  
10 AFFIRMED in part.  
11

12 Defendants-Appellants (“Defendants”), all of whom are individual members of the  
13 Saratoga Springs Planning Board, appeal from the order of the United States District Court for  
14 the Northern District of New York (Sharpe, *J.*) denying their claims to qualified and legislative  
15 immunity. We assume the parties’ familiarity with the underlying facts, the procedural history  
16 of the case, and the issues raised on appeal.

17 We first address Defendants’ challenge to the District Court’s denial of qualified  
18 immunity. Because our review of the court’s qualified immunity determination would not be  
19 limited to an abstract question of law, but instead would be “fact-based,” *Ashcroft v. Iqbal*, 129  
20 S. Ct. 1937, 1947 (2009) (citing *Johnson v. Jones*, 515 U.S. 304, 317 (1995)), we lack  
21 jurisdiction to hear this interlocutory appeal. We therefore dismiss Defendants’ interlocutory  
22 appeal insofar as it contests the District Court’s denial of qualified immunity.

23 Defendants’ challenge to the District Court’s denial of legislative immunity does not  
24 pose the same jurisdictional problem, in light of the fact that it raises a “neat abstract issue[] of  
25 law.” *Johnson*, 515 U.S. at 317 (internal quotation marks and citation omitted). We therefore  
26 review the court’s legislative immunity determination *de novo*. *State Employees Bargaining*  
27 *Agent Coalition v. Rowland*, 494 F.3d 71, 82 (2d Cir. 2007). Legislative immunity is a form of  
28 absolute immunity reserved for officials acting within the sphere of legitimate legislative

1 activity. *See id.* at 82-83. As the District Court noted, the inquiry as to whether a defendant is  
 2 entitled to legislative immunity focuses on whether, “stripped of all considerations of intent and  
 3 motive,” the defendant’s actions “were, in form, quintessentially legislative” or were “integral  
 4 steps in the legislative process.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998); *see also*  
 5 *Rowland*, 494 F.3d at 89-90.

6 The court below correctly concluded that the action taken by Defendants with regard to  
 7 Plaintiffs-Appellees’ special use permit application was administrative in nature, and thus not of  
 8 the sort legislative immunity was intended to cover. *See, e.g., Rowland*, 494 F.3d at 92. We  
 9 therefore affirm the District Court’s denial of legislative immunity.

10 Accordingly, we hereby **DISMISS** the appeal for lack of appellate jurisdiction insofar as  
 11 it challenges the District Court’s denial of qualified immunity. We **AFFIRM** the order of the  
 12 District Court insofar as it denied Defendants legislative immunity.

13  
 14 FOR THE COURT:

15 Catherine O’Hagan Wolfe, Clerk

16 By:   
 17

A TRUE COPY

Catherine O’Hagan Wolfe, Clerk

by   
 DEPUTY CLERK